

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

OLLEN G. COLBERT, Jr.	) Case No.: C-1-00-909
3475 Vine St.)
Cincinnati, Ohio 45220	) Judge Susan Dlott
	) Magistrate Judge Timothy J. Hogan
Plaintiff,)
)
vs.	) <u>PLAINTIFF'S MOTION FOR</u>
	) <u>EXTENSION OF TIME TO RESPOND TO</u>
	) <u>THE MOTIONS FOR SUMMARY</u>
CINCINNATI GAS AND ELECTRIC CO.	) <u>JUDGMENT BY CINERGY/THE</u>
139 E. Fourth St.	) <u>CINCINNATI GAS AND ELECTRIC</u>
Cincinnati, Ohio 45202	) <u>COMPANY AND THE INTERNATIONAL</u>
and	) <u>BROTHERHOOD OF ELECTRICAL</u>
INTERNATIONAL BROTHERHOOD OF	) <u>WORKERS, LOCAL 1347</u>
ELECTRICAL WORKERS, LOCAL 1347)
4100 Colerain Avenue)
Cincinnati, Ohio 45223-2590)
Defendants.)
)

Comes now Plaintiff, Ollen G. Colbert, Jr., by and through counsel, to respectfully move the Court to grant Plaintiff an extension of time to respond to the Motion for Summary Judgment filed on January 13, 2005, by Cinergy/ The Cincinnati Gas and Electric Company and the Motion of Summary Judgment filed on January 14, 2005 by International Brotherhood of Electrical Workers, Local 1347. As more specifically shown in the Attorney's Affidavit, Plaintiff's case is a hybrid case and Defendants' Motions each require responses on several different levels. Counsel for the Defendants, namely Ariane S. Johnson, for Cinergy/The Cincinnati Gas and Electric Co., and Jerry Spicer, for International Brotherhood of Electrical Workers, Local 1347, have been notified by telephone of my request on March 4, 2005. Mr.

Spicer responded that International Brotherhood would not object to this extension. Ms. Johnson, is out of town and has not responded as of March 7, 2005. Plaintiff will not enter any objection to an extension of equal length for Defendants, should Defendants need it for filing a Reply.

WHEREFORE, Plaintiff requests a two-week extension, from March 8, 2005 to March 22, 2005.

Respectfully submitted,

s/Rose Ann Fleming
Rose Ann Fleming (0041337)
Rose Ann Fleming, P.C.
3855 Ledgewood Drive, Suite 13
Cincinnati, OH 45207
Phone: 513-924-8389
Fax: 513-745-4282
Email: Fleming@xavier.edu
Attorney for Plaintiff

AFFIDAVIT OF ATTORNEY IN SUPPORT OF MOTION TO EXTEND TIME

I, Rose Ann Fleming, the undersigned, having been duly warned and cautioned, do hereby depose and state:

1. I am an attorney in good standing.
2. I am Counsel for Plaintiff in the above captioned matter.
3. I am currently involved in heavy litigation in U.S. Tax Court, in Cincinnati, and in

Common Pleas Court in Clermont County, Ohio and Butler County, Ohio.

4. I need an additional two-week period to complete my response to the Motion for Summary Judgment filed on January 13, 2005 by Cinergy/The Cincinnati Gas and Electric

Company and the Motion for Summary Judgment filed on January 14, 2005 by the International Brotherhood of Electrical Workers, Local 1347.

5. This case is a “hybrid” case, arising out of issues of employment law as well as out of issues of employment discrimination based on race, and hostile environment, to mention only two.

6. Further, the Defendants have introduced the former case, *Colbert v. Cincinnati Gas and Electric Co., et al.*, (Case No. 1:97-CV-00685), filed July 23, 1997, as a *res judicata* defense. Plaintiff’s present Counsel is not familiar with this case. The former case is only partially on the internet. Plaintiff does not have his file on it, and thus extended time is required to become familiar with it.

7. Defendant Cinergy has raised an issue of continuing versus discrete discrimination based on the Plaintiff’s multiple and successive filings with EEOC which requires legal research on Plaintiff’s part in order to form a reply.

8. In addition, Plaintiff must deal with the difficulties caused by the denial of required discovery imposed by the Court’s Order entered December 7, 2004, (Doc. 87), granting in part “limited” discovery to Plaintiff’s Motion (Doc. 81). Examples of such difficulties are as follows: (a) Defendant Cinergy/The Cincinnati Gas and Electric Company made certain fact statements such as, Plaintiff has no proof that he can establish a “prima facie” case on discrimination when Defendant has in its control almost all of the information required to do so and will not release it. (b) Defendant International Brotherhood of Electrical Workers, Local 1347, states that Plaintiff cannot show that the Union Contract was broken when it will not release a copy of the Union Agreement pertinent to the year of Plaintiff’s termination, namely,

March 8, 2000.

9. Therefore, because of Plaintiff's lack of critical information totally in the control of the Defendants and because of the complexity of the legal issues herein, Plaintiff's Counsel is required to spend more time in research of the legal arguments raised by the Defendants, among other things, than she would have had to do otherwise.

10. In the interest of justice for the Plaintiff, I am asking the Court to extend the deadline for submission of Plaintiff's responses in this matter from March 8, 2005, to March 22, 2005.

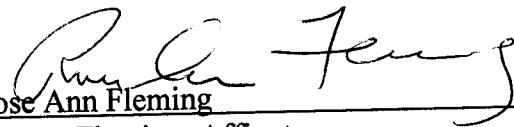
11. I have called both Counsel at their law offices on March 4, 2005, to let them know of this Motion to Extend Time and to ask if they would object. Mr. Spicer, on behalf of Defendant, International Brotherhood of Electrical Worker, Local 1347, has responded that he would not object to a two week extension of time. Ms. Johnson did not reply as of March 7, 2005, since she is out to town. 12. Plaintiff will not object that the Defendants' Reply time to Plaintiff's Response be extended by two full weeks.

13. I have had two previous extensions. I am making progress with both Memoranda opposing the respective motions for summary judgment, addressed to each Defendants' Motion for Summary Judgment and feel confident that I will be able to complete the research required by March 22, 2005.

14. The Defendants are not prejudiced since no trial date has been set in this matter.

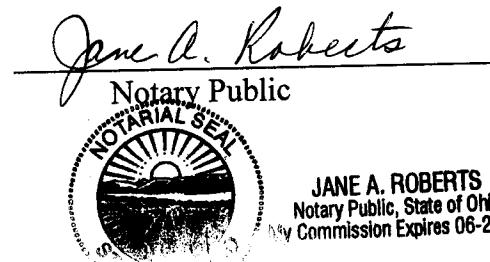
15. I do not ask for this extension to cause useless delay.

AFFIANT FURTHER SAYETH NAUGHT.


/s/Rose Ann Fleming
 Rose Ann Fleming, Affiant

Sworn to and subscribed in my presence, this 7th day of March 2005.

My commission expires: 6/22/08



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the Plaintiff's Motion to Extend Time was electronically filed using the Case Management/Electronic Case Filing (CM/ECF) system with the Office of the Clerk of Courts, United States Federal District Court for the Southern District of Ohio, Western Division, Potter Stewart U.S. Courthouse, 100 E. Fifth Street, Cincinnati, Ohio 45202 on the 7th day of March, 2005. Such filing will send notification of such filing to the following Counsel for Defendants:

Ariane S. Johnson, Esq.
Cinergy
Cincinnati Gas and Electric Company
1000 East Main Street
Plainville, IN 46168

Jerry L. Spicer
International Brotherhood of Electrical Workers. Local 1347
Snyder Rakay Spicer
11 W. Monument Street, Suite 307
Dayton, OH 45402

Respectfully submitted,

s/Rose Ann Fleming
Rose Ann Fleming
Bar Id. #0041337
Attorney for Plaintiff
Rose Ann Fleming Professional Legal Corp.
3855 Ledgewood Drive
Suite 13
Cincinnati, OH 45207
Phone: 513-924-8389
Fax: 513-745-4282
Email: fleming@xavier.edu